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SAN FRANCISCO and CITY OF SAN FRANCISCO  
UPTOWN PARKING CORPORATION

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SAN FRANCISCO only

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CRAIG YATES,

Plaintiff,

v.

UNION SQUARE; CITY AND COUNTY OF  
SAN FRANCISCO, CITY OF SAN  
FRANCISCO UPTOWN PARKING  
CORPORATION; EMPORIO RULLI IL  
CAFFE UNION SQ.; EMPORIO RULLI IL  
CAFFE UNION SQ., INC.; and DOES 1  
through 50, Inclusive,

Defendants.

CASE NO. C07-4087 JSW

**DEFENDANTS' STATUS REPORT**

Date: January 4, 2008

Time: 1:30 p.m.

Place: Courtroom 2, 17th Floor

Judge: Hon. Jeffrey S White

Trial Date: None Set

Complaint Filed: August 9, 2007

Defendants, City and County Of San Francisco and City Of San Francisco Uptown  
Parking Corporation ("Defendants") by and through the undersigned counsel apologize for  
submitting a separate status report. However, Plaintiff's counsel ignored Defendants' requests to

1 cooperate in the preparation of a Joint Case Management Conference Statement ("CMC  
2 Statement"). Despite defendants' efforts to expedite the CMC process, it was not until Friday,  
3 December 28, 2007, the due date, that Plaintiff emailed a 13-page self-serving "Joint" Case  
4 Management Statement which purports to confirm numerous "agreements" reached by the parties.  
5 Because Plaintiff's counsel refused to meet and confer to prepare the CMC Statement, and his late  
6 submission of a draft Statement, no agreements have been possible at this time.

7 1. A brief description of the events underlying the action.

8 A. On August 9, 2007, Plaintiff filed this complaint (the "Complaint") against  
9 Defendants for Injunctive & Declaratory Relief and Damages for violations of the Americans with  
10 Disabilities Act and various California statutes.

11 B. On or about October 18, 2007, Defendants filed a motion for related case.  
12 The case was eventually not deemed related. The case was reassigned to this Court. A CMC is set  
13 for January 4, 2007.

14 C. On November 19, 2007, Plaintiff filed a Request for Dismissal of Defendants  
15 Emporio Rulli Il Caffe Union Sq. and Emporio Rulli Il Caffe Union Sq., Inc., which request was  
16 granted on November 19, 2007.

17 D. Pursuant to General Order 56, the parties had been acting in good faith to  
18 advance this case to trial and resolution. On December 6, 2007, the parties met at Union Square and  
19 performed an extensive overview of the property.

20 E. On December 12, 2007, Defendants re-noticed their Motion for this Court to  
21 Decline Supplemental Jurisdiction Over and to Dismiss Plaintiff's State Law Claims [28 U.S.C.  
22 Section 1367 (c)] and to Strike Plaintiff's Unsupported and Improper Damage Prayer from the  
23 Complaint [FRCP 12 (f)] ("Motion"), which Motion was originally filed on September 28, 2007,  
24 before Judge Elizabeth D. Laporte. A hearing on the Motion is set for February 8, 2008.

25 F. On December 20, 2007, co-counsel, James Emery, Esq., faxed a letter to  
26 Plaintiff's counsel inviting him to conduct the "in person" meet and confer in anticipation of the  
27 CMC (See Exhibit "A" hereto.). Mr. Emery asked Plaintiff's counsel to identify each alleged  
28 violation at Union Square. Mr. Emery further noted that "Defendants will then respond, as

1 contemplated in General Order 56, identifying which alleged violations they will remedy and  
2 explaining why the remaining alleged violations require no action...Please let us know when  
3 Plaintiffs are prepared to meet and confer, and to identify each alleged violation at Union Square".  
4 Plaintiffs counsel did not respond. Rather, on the date the Joint CMC Statement is to be filed,  
5 Plaintiff submitted a 13-page vitriolic, argumentative description of the case and legal issues. (See  
6 Exhibit "B" hereto.)

7 G. At 1:27 p.m., December 20, 2007, my paralegal, Angela Pereira, emailed a  
8 reminder to Plaintiff's counsel that a Joint CMC Statement was to be filed on December 27, 2007,  
9 and reminded him of his obligation to submit Plaintiff's contentions to Defendants (See Exhibit  
10 "C"). Still silence.

11 H. On December 21, 2007, my office sent Plaintiff's counsel a Proposed  
12 Stipulation and Order vacating the upcoming Case Management Conference. It was not until 4:00  
13 p.m. December 28, 2007, that Plaintiff's counsel responded refusing to sign the stipulation. (See  
14 Exhibit "D")

15 I. Defendants believe that a Case Management Conference at this time is pre-  
16 mature because Plaintiff has not articulated his specific claims for injunctive, despite the recent site  
17 inspection, Plaintiff has failed to meet and confer regarding the Joint CMC Statement and the  
18 parties have agreed to mediate pursuant to General Order 56. After the mediation, all sides will be  
19 in a better position to give a status report to the Court and to participate meaningfully in a Case  
20 Management Conference.

21 J. None of Plaintiff's proposed discovery procedures, timing, length of trial or  
22 any other matters stated in the "Joint CMC Statement" have been discussed, let alone agreed upon.

23 K. At this time, Defendants request that the Court vacate the current Case  
24 Management Conference to a future date which would be fourteen (14) days after the conclusion of  
25 the mediation.

1 DATED: December 28, 2007

JEFFER, MANGELS, BUTLER & MARMARO LLP  
MARTIN H. ORLICK  
MATTHEW S. KENEFICK

4 By: /s/Martin H. Orlick

MARTIN H. ORLICK  
Attorneys for Defendants CITY AND COUNTY OF  
SAN FRANCISCO and CITY OF SAN FRANCISCO  
UPTOWN PARKING CORPORATION

## **EXHIBIT A**

## CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA  
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JAMES M. EMERY  
Deputy City Attorney

DIRECT DIAL: (415) 554-4261  
E-MAIL: jim.emery@sfgov.org

December 20, 2007

**Via Facsimile:** 888-210-8868

Timothy S. Thimesch, Esq.  
158 Hilltop Crescent  
Walnut creek, CA 94576

Re: *Yates v. Union Square*, N. D. Cal. Case No. C07-4087

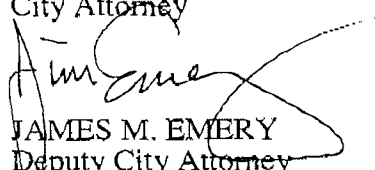
Dear Tim:

I am responding to your email of December 7. You have proposed that the parties conduct joint measurements of all features at Union Square. My alternative proposal is that at the upcoming meet-and-confer session, as contemplated in General Order 56, plaintiffs identify each alleged violation at Union Square. Defendants will then respond, as contemplated in General Order 56, identifying which alleged violations they will remedy and explaining why the remaining alleged violations require no action. To the extent defendants' explanations challenge plaintiffs' numerical measurements, rather than plaintiffs' interpretation of applicable law, the parties will have to develop agreed-upon measurements. I expect that disputed numerical measurements will be rare, if they happen at all. It is most efficient to deal with this problem when, and if, it specifically arises.

Please let us know when plaintiffs are prepared to meet and confer, and to identify each alleged violation at Union Square.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

  
JAMES M. EMERY  
Deputy City Attorney

cc: Gene Farber  
Martin Orlick  
Elaine O'Neil

**EXHIBIT A**

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TOTAL P.02

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

DENNIS J. HERRERA  
City AttorneyJIM M. EMERY  
Deputy City AttorneyDIRECT DIAL: (415) 554-4261  
E-MAIL: jim.emery@sfgov.org**FACSIMILE COVER SHEET****Thursday, December 20, 2007; Time: 12:32 PM**

TO:	OF:	PHONE:	FAX:
Timothy S. Thimesch, Esq.	Thimesch Law Offices	(925) 588-0400	(888) 210-8868
CC: Gene Farber, Esq.	Thimesch Law Offices		(888) 210-8868
CC: Martin Orlick, Esq.	Jeffer, Mangels, Buttler, et al.	(415) 398-8080	(415) 398-5584

FROM:	OF:	PHONE:	FAX:
Jim Emery, Esq.	City Attorney's Office	(415) 554-4261	(415) 554-3837

**MESSAGE****Re: Yates v. Union Square, N.D. Ca., Case No. C07-4087****Attached please find a letter dated December 20, 2007, if you have any questions or concerns, please contact our office. Thank you.**

We are transmitting a total of 2 pages,  
including this cover sheet.

If you did not receive all of the pages or there is another problem, please call me or  
Carla Ramos at (415) 554-4279.

**CONFIDENTIALITY NOTE**

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## **EXHIBIT B**



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17 Attorneys for Defendants CITY AND COUNTY OF SAN FRANCISCO and CITY OF SAN FRANCISCO  
 18 UPTOWN PARKING CORPORATION, a California Corporation

19 UNITED STATES DISTRICT COURT  
 20 NORTHERN DISTRICT OF CALIFORNIA

21 CRAIG YATES,  
 22 Plaintiffs,

CASE NO. C07-04087 JSW  
 Civil Rights

23 v.

**JOINT CASE MANAGEMENT  
 STATEMENT**

24 CITY AND COUNTY OF SAN  
 FRANCISCO; CITY OF SAN FRANCISCO  
 25 UPTOWN PARKING CORPORATION; and  
 DOES 1-50, Inclusive,  
 26 Defendants.

**Conference:**  
 Date: January 4, 2007  
 Time: 1:30 PM  
 Place: Courtroom 2, 17<sup>th</sup> Fl  
 Judge: Hon. Jeffrey S. White

27 \_\_\_\_\_ /

28 Pursuant to this Court's Civil Local Rules 16-9 and 16-10, the parties jointly submit this

1 Case Management Statement and Proposed Order. Each party certifies that its lead trial counsel  
 2 who will try this case met and conferred for the preparation of this Statement as required by Civ.  
 3 L.R. 16-3.

4 The parties make the following representations and recommendations:

5  
 6 **I. DESCRIPTION OF THE CASE**

7 **1. A brief description of events underlying the action:**

8 **a. Plaintiffs' Position:**

9 This action involves a Complaint under the ADA and California law for  
 10 failure to provide both physical and programmatic access at the Union Square park and  
 11 underground parking garage. To the square itself, all normal paths of travel into the park are  
 12 blocked by non-compliant ramps. This is despite the square being completely demolished down  
 13 to the base dirt, and built from scratch in approximately 2003 to the tune of \$25 million. The  
 14 garage is also blocked by path of travel problems, and has no compliant parking. The overhead  
 15 entry is restricted and the limited overhead parking available to the disabled on the first floor of  
 16 the garage is nothing but a decoy. The painted lines are actually reserved as a vehicle maneuver  
 17 area. In addition, defendants' policies, practices and procedures discriminate against the disabled  
 18 in that they discourage high-top van users from parking in the garage. If numerosity can be  
 19 obtained, plaintiff intends to seek certification of a class action. Plaintiff seeks an injunction,  
 20 individual damages, as well as reasonably statutory attorney fees, litigation expenses and costs.

21 Failing to provide proper disabled access as required under Sections 4450  
 22 et seq. of the Government Code also constitutes a *per se* violation of Section 54.1 Civil Code  
 23 which guarantees "full and equal access" for disabled persons without the necessity of proving  
 24 any wrongful "intent." (Hankins v. El Torito Restaurants, Inc., et al. (1998) 63 Cal.App.4th 510;  
 25 Donald v. Cafe Royale (1990) 218 Cal.App.3d 168.) Damages, injunctive relief, and attorney's  
 26 fees are available pursuant to Sections 54.3 and 1021.5 Civil Code, and Section 19953 Health &  
 27 Safety Code; and injunctive relief and attorney's fees are additionally available pursuant to  
 28 Sections 308(a) and 505 of the ADA. Plaintiffs' Complaint in this action alleges a continuing

1 violation until proper access is finally provided. Any violation of the ADA is also incorporated as  
 2 an independent violation of Sections 54(c) and 54.1(d) California Civil Code, guaranteeing  
 3 damages per Section 54.3 Civil Code on this basis.

4  
 5 **b. Position of Defendants:**

6 Defendants are investigating plaintiff's claims, and deny that any violations of law took  
 7 place.

8  
 9 **2. The principal factual issues that the parties dispute:**

10 1. Who are the owners, operators, and lessors of the subject park, garage, and  
 11 what are their responsibilities for providing disabled access under the lease and operator  
 12 agreements?

13 2. What are defendants' policies, practices and procedures with regard to  
 14 entry of disabled parkers with high-top vans?

15 3. What were the policies, practices and procedures followed by defendants in  
 16 obtaining approval from the city administrative agencies of handicap design for both the parking  
 17 and garage?

18 4. Have the defendants received any public, state or federal funds in  
 19 connection with the construction, operation and maintenance of the park or garage?

20 5. What construction or "alterations, structural repairs or additions," have the  
 21 facilities undergone since July 1, 1969 (Government Code §§ 4450 et seq.), and since January 1,  
 22 1982 (Cal. Code Regulations, Title 24)?

23 6. What "alterations" or "new construction" have the facilities undergone  
 24 since January 26, 1992 (ADA §302); and since January 1, 1977 (Section 504 of the Rehabilitation  
 25 Act of 1973)?

26 7. Were the parking, entrances, service counters, paths of travel, public  
 27 restrooms, and other relevant facilities serving the subject garage and park inaccessible to  
 28 wheelchair users on dates plaintiff Bohlke visited the premises?

1                   8.       What statutory damages is plaintiff incurring as a result of lack of access,  
2 under California state law standards including Section 54.3 Civil Code?

3                   7)       What access improvements and changes in policy, practice and procedure  
4 have defendants already made in response to plaintiffs' lawsuit?

5                   8)       What barriers have been removed since service of the complaint?  
6 (Government Code Section 4452 requires correction of access deficiencies within 90 days of  
7 receiving "notice.")

8                   9)       Was the level of the construction sufficient at the park to require  
9 compliance with "new construction requirements" under all applicable regulations?

10  
11                   **3.       The principal legal issues that the parties dispute:**

12                   1)       What access changes and reasonable modifications in policy are required  
13 under the Americans With Disabilities Act of 1990 and the corresponding regulations entitled  
14 Americans with Disabilities Act Access Guidelines?

15                   2)       What access changes and monetary damages are required for violations of  
16 Section 54.1 Civil Code?

17                   3)       What damages are also required under California law for access violations  
18 under ADA standards, as incorporated by reference into California Civil Code Sections 54(c) and  
19 54.1(d)?

20  
21                   **4.       The other factual issues which remain unresolved for the reason stated below**  
22 **and how the parties propose to resolve those issues:** None known at this time.

23  
24                   **5.       The parties that have not been served and the reasons:** All named parties have  
25 been served.

26  
27                   **6.       The additional parties that the below-specified parties intend to join and the**  
28 **intended time from for such joinder:** Plaintiff is investigating the nature and whether

1 additional parties must be joined.

## 2 3 **II. ALTERNATIVE DISPUTE RESOLUTION**

4 **7. The following parties consent to assignment of this case to a United States**  
5 **Magistrate Judge for trial:** Plaintiff did consent to the initial assignment to Magistrate Judge  
6 Laporte. Defendants declined.

7  
8 **8. The parties have already been assigned to the following court ADR process:**

9 **Plaintiff's Position:** General Order 56. The parties held a partial site inspection  
10 on December 6, 2007. The meeting was not productive and did not result in a settlement.  
11 Although numerous path of travel problems were identified, including at every ramp and path into  
12 the park, defendants denied the existence of an obligation to provide such access. More  
13 importantly, the parties could not agree on whether the park's recent reconstruction should subject  
14 it to heightened "new construction" standards. Discovery will be necessary to demonstrate that  
15 the park has been completely rebuilt, and that paths of travel into the park, as well as high-top van  
16 parking, etc., at the garage, are necessary and required.

17  
18 **9. The ADR process to which the parties jointly request referral:**

19 **Plaintiff's Position:** Because of fundamental disagreements about the scope of  
20 liability, further ADR would not be productive at this point. Discovery and possible motion work  
21 will be necessary to clarify liability.

## 22 23 **III. DISCLOSURES**

24 **10. The parties certify the following disclosures:** Each party served an initial  
25 disclosure. The parties agree to produce all documents disclosed.

26 **a. Plaintiffs' Requests the Following Disclosure:**

27 1) Plaintiffs request disclosure of all documents, and the identity of all  
28 witnesses with testimony, that refer or relate to the issue of defendants' policies, practices and

1 procedures for entry into the garage by handicap high-top van users.

2 2) Plaintiffs request disclosure of both the subject garage and park  
3 construction and alteration history in that defendants have denied liability under Sections 4450 et  
4 seq. of the Government Code. (San Francisco v. Grant (1986) 181 Cal.App.3d 1085; Donald v.  
5 Sacramento Valley Bank (1989) 209 Cal.App.3d 1183; and Donald v. Cafe Royale (1990) 218  
6 Cal.App.3d 168.) This should include all applications, permits, plans, variances, and exceptions.

7 3) Plaintiffs request disclosure of the identity of all persons from local  
8 building, planning and public work departments with whom defendants have discussed any  
9 changes at the subject park.

10 4) Plaintiffs request the disclosure of defendants' employee  
11 handbooks, memorandums, correspondence, etc., since 1990, and all witnesses and documents for  
12 that period, that concern defendants' policies, practices and procedures for providing the disabled  
13 access to the garage.

14 5) Since the defendants have been involved in prior access litigation,  
15 plaintiffs request copies of all dispositive motions, sworn declarations, discovery responses and  
16 deposition transcripts from that litigation.

17 6) Finally, if defendants have already initiated changes to provide  
18 access or to change their relevant policies, plaintiffs request immediate disclosure of all  
19 documentation and witnesses relating to the nature of such changes, the date decisions to institute  
20 them were formed and by whom. This documentation should include all directives,  
21 memorandums, rule-books, communications, decisions, surveys, bids, proposals, permits, plans,  
22 cost estimates (and cost billing for each access feature, i.e., the cost to add accessibility features to  
23 the paths of travel, entrance, parking, etc., as well as the cost of the entire project), etc. If  
24 defendants intend to invoke "advice of counsel" or "attorney-client privilege" to prevent such  
25 disclosure, plaintiffs request a privilege log as to any such documents withheld from disclosure.

#### 26 27 IV. DISCOVERY

28 11. The parties agree to the following discovery plan: The parties intend to utilize

all discovery tools available under the code, including interrogatories, requests for production and admission, subpoenas, etc., and suggest the setting of the following limitations and deadlines:

**a. Limitations:**

i) Depositions: No limit.

ii) Interrogatories: No limit.

iii) Interrogatories Directed at Responses to Requests for Admission:

No limit.

iv) Experts. The parties do not agree to any limitations on discovery

from experts.

v) Supplemental disclosures: Per F.R.C.P. Rule 26(a) and (e), and

local rules.

vi) Initial Disclosures From Any Newly Added Parties: within 30 days

of the new party's initial appearance.

**b. Deadlines:** If a trial date is set at the suggested date of November 21, 2008:

i) Deadline to disclose experts and expert

reports ..... August 15, 2008

ii) Deadline to complete discovery

including experts, and deadline to

complete dispositive motions ..... September 15, 2008

iii) Deadline to disclose identities of all

witnesses to be called in each party's

case-in-chief..... November 10, 2008

**c. Plaintiffs' Discovery (This Section is Presented Solely By Plaintiffs)**

**A. Scope And Purpose Of Plaintiffs' Discovery  
[FRCP Rule 26(f)(2)]**

Plaintiffs will utilize the following discovery tools to discover the relevant and

1 material facts: requests for disclosure, requests for admissions, interrogatories, requests for  
2 production, subpoenas, site inspections, and depositions.

3 Plaintiff's discovery and disclosure requests will seek production of documents,  
4 and identification of facts and witnesses related to the issue of defendants' relevant policies,  
5 practices and procedures on the issues outlined above.

6 Plaintiff seeks disclosure and will propound discovery regarding defendants receipt of  
7 public, local, state or federal funds.

8 Plaintiff seeks disclosure and/or take depositions in conjunction with written discovery to  
9 ascertain the subject park and garage's construction and alteration history in that defendants have  
10 denied liability under Sections 4450 et seq. of the Government Code. (San Francisco v. Grant  
11 (1986) 181 Cal.App.3d 1085; Hankins v. El Torito Restaurants, Inc., et al. (1998) 63 Cal.App.4th  
12 510; Donald v. Sacramento Valley Bank (1989) 209 Cal.App.3d 1183; and Donald v. Cafe  
13 Royalé (1990) 218 Cal.App.3d 168.) Plaintiffs will seek to ascertain this information through  
14 requests for disclosures, stipulations, requests for admission, interrogatories, and/or requests for  
15 production with depositions. The parties to be deposed will include, but are not limited to, the  
16 relevant owners, operators, contractors, architects, building and government officials, etc.

17 Defendants' person most qualified will be deposed as to all liability issues,  
18 including: notice; the construction and ownership history; the current and past designs of the  
19 premises; and all alleged defenses and affirmative defenses.

20 Finally, to the extent defendants have or intend to change their policies, practices  
21 and procedures, or to conduct work to modify the subject building to provide further access for  
22 the disabled, plaintiffs will seek disclosure and/or discovery of all documentation of such  
23 changes, including all memorandums, communications, rules book changes, handbooks, policies,  
24 procedure manuals, permits, plans, cost estimates and cost billing for each access feature, i.e., the  
25 cost to add accessibility features to the handicap parking, the paths of travel into and around both  
26 the garage and park, the service counters, the public restrooms, etc., as well as the cost of the  
27 entire project.

28 ////



1                                    **B.     Plaintiffs' Initial Depositions Of Witnesses And Initial**  
2                                    **Discovery Requests [FRCP Rule 26(f)(2)]**

3                                    Assuming defendants cooperate in providing disclosures and responding to  
4                                    discovery in a full and timely manner, plaintiffs will take the following initial depositions, which  
5                                    will be scheduled subject to the convenience of counsel, the parties, and witnesses, the discovery  
6                                    cutoff in this case, and the latitude granted by FRCP, Rule 29:

7                                    1.        **Deposition of Defendants' Persons Most Qualified:** These individuals  
8                                    have discoverable "knowledge" regarding policies, practices and procedures and alterations to the  
9                                    building.

10                                  2.        **Deposition of Persons Most Qualified from the City.** These individuals  
11                                  have discoverable "knowledge" alterations to the building and the approval process, as well as  
12                                  receipt of local, public, state or federal funds.

13  
14                                  **C.     Plaintiffs' Follow-Up Depositions And Discovery Requests**

15                                  To the extent plaintiffs cannot discover the necessary facts by way of stipulations,  
16                                  initial requests for disclosures and requests for admission, other written discovery, and/or  
17                                  depositions (see II. A-B, beginning above at p. 7), plaintiffs will conduct follow-up written  
18                                  discovery and notice further depositions of any further identified personnel, owners, operators,  
19                                  lessors and lessees, as well as contractors, architects, building and planning department officials,  
20                                  and other governmental officials. (Assuming full cooperation of the defendants, and subject to  
21                                  the latitude granted by F.R.C.P., Rule 29, this discovery will be completed prior to the suggested  
22                                  discovery cutoff.)

23  
24                                  d.        **Defendants' Position On Discovery And Disclosures**  
25                                  **(This Section is Presented Solely By Defendants)**

26                                  A.        **Scope And Purpose Of Defendants' Discovery**  
27                                  **[FRCP Rule 26(f)(2)]**

28                                  Defendants will utilize the following discovery tools to discover the relevant and material  
                                 facts: requests for disclosure, requests for admissions, interrogatories, requests for production,

subpoenas, site inspections, and depositions. Defendants will seek discovery concerning liability, plaintiffs' damages, and all defenses.

**B. Defendants' Initial Depositions Of Witnesses And Initial Discovery Requests [FRCP Rule 26(f)(2)]**

If discovery appears necessary to gather the evidence necessary to reach a settlement, defendants will proceed with initial formal written discovery, including requests for admissions, interrogatories, requests for production. Assuming plaintiffs cooperate in responding to this discovery in a full and timely manner, defendants will take the following initial depositions, which will be scheduled subject to the convenience of counsel, and the parties, and witnesses, the discovery cutoff in this case:

1. Deposition of plaintiff Craig Yates.
2. Additional witnesses identified by plaintiffs as having witnessed the events in question.
3. Additional witnesses as may be discovered.

**C. Defendants' Follow-Up Depositions And Discovery Requests**

As required.

12. The parties request a trial date as follows: Nov. 21, 2008.

13. The parties expect that the trial will last for the following number of days:  
Estimate without the benefit of discovery and identification of issues through pre-trial statement:  
6-8 trial days.

**V. IDENTIFICATION AND SIGNATURE OF LEAD TRIAL COUNSEL**

14. Identify by name, address and phone number lead trial counsel for each party.

a. For Plaintiff CRAIG YATES:

LAW OFFICES OF GENE A. FARBER

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14 **b. For defendant CITY AND COUNTY OF SAN FRANCISCO:**

15 JAMES MOXON EMERY, ESQ. SBN 153630  
16 OFFICE OF THE CITY ATTORNEY  
17 Fox Plaza, 1390 Market St., Sixth Floor  
18 San Francisco, CA 94102  
19 (415) 554-4261  
20 Fax: 415-554-3837  
21 Email: [jim.emery@sfgov.org](mailto:jim.emery@sfgov.org)

22 **c. For defendants CITY OF SAN FRANCISCO UPTOWN PARKING**  
23 **CORPORATION:**

24 JEFFER, MANGELS, BUTLER & MARMARO LLP  
25 MARTIN H. ORLICK, ESQ., [MHO@jmbm.com](mailto:MHO@jmbm.com)  
26 Two Embarcadero Center, 5th Floor  
27 San Francisco, CA 94111  
28 Telephone: 415/398-8080  
Facsimile: 415/398-5584

**VI. SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL**

Pursuant to Civil L.R. 16-6, each of the undersigned certifies that he or she has read with the client the brochure entitled "Dispute Resolution Procedures in the Northern District of California," discussed the available dispute resolution options provided by the court and private entities and has considered whether this case might benefit from any of the

////

1 available dispute resolution options.

2

3 Dated: December 28, 2007

TIMOTHY S. THIMESCH  
THIMESCH LAW OFFICE

4

LAW OFFICES OF GENE A. FARBER

5

6

7

/s/ \_\_\_\_\_  
Attorneys for Plaintiff  
CRAIG YATES

8

9

10 Dated: December 28, 2007

JEFFER, MANGELS, BUTLER & MARMARO LLP  
MARTIN H. ORLICK, ESQ.

11

12

13

/s/ \_\_\_\_\_  
Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO;  
CITY OF SAN FRANCISCO UPTOWN  
PARKING CORPORATION

14

15

16 Dated: December 28, 2007

JAMES MOXON EMERY, ESQ.  
OFFICE OF THE CITY ATTORNEY

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/s/ \_\_\_\_\_  
Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO

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**CASE MANAGEMENT ORDER**

The Court hereby adopts the Case Management Statement and Proposed Order as the Case Management Order for the case, and the parties are ordered to comply with this Order. In addition the Court orders: [The Court may wish to make additional orders, such as:

- a. Referral of the parties to court or private ADR process;
- b. Schedule a further Case Management Conference;
- c. Schedule the time and content of supplemental disclosures;
- d. Specially set motions;
- e. Impose limitations on disclosure or discovery;
- f. Set time for disclosure or identity, background and opinions of experts;
- g. Set deadlines for completing fact and expert discovery;
- h. Set time for parties to meet and confer regarding pretrial submissions;
- i. Set deadline for hearing motions directed to the merits of the case;
- j. Set deadlines for submission of pretrial material;
- k. Set date and time for pretrial conference;
- l. Set a date and time for trial.]

Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. JEFFREY S. WHITE  
UNITED STATES DISTRICT COURT JUDGE

## **EXHIBIT C**

**Pereira, Angie**

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**From:** Pereira, Angie  
**Sent:** Thursday, December 20, 2007 1:27 PM  
**To:** 'tim@thimeschlaw.com'  
**Cc:** Orlick, Martin H.; Kenefick, Matthew; 'jim.emery@sfgov.org'; 'keilcon@aol.com'  
**Subject:** Yates v. Union Square

Good Afternoon Mr. Thimesch:

As you know, a joint case management statement is due to be filed with the Court by December 27, 2007, (CMC is set for 1/4/08). As Plaintiff, it is your obligation to forward Plaintiff's contentions to us and we will add defendants' contentions or comments. Thank you.

---

Angela Pereira  
Paralegal  
JMBM | Jeffer, Mangels, Butler & Marmaro LLP  
Two Embarcadero Center, 5th Floor  
San Francisco, California 94111

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EXHIBIT C

EXHIBIT D



Pereira, Angie

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**From:** Pereira, Angie  
**Sent:** Friday, December 21, 2007 3:37 PM  
**To:** 'tim@thimeschlaw.com'  
**Cc:** Orlick, Martin H.  
**Subject:** Yates v. Union Square (On behalf of Marty Orlick)

**Importance:** High



STIPULATION TO  
CONTINUE CMC.DO..

Mr. Thimesch:

Per my earlier telephone call, attached hereto, please find a stipulation Mr. Orlick has prepare to have the case management conference continued for 90 days. Please review, and if it meets with your approval, please sign and return. Thank you.

---

Angela Pereira  
Paralegal  
JMBM | Jeffer, Mangels, Butler & Marmaro LLP  
Two Embarcadero Center, 5th Floor  
San Francisco, California 94111

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EXHIBIT D

1 JEFFER, MANGELS, BUTLER & MARMARO LLP  
MARTIN H. ORLICK (Bar No. 083908)  
2 MATTHEW S. KENEFICK (Bar No. 227298)  
Two Embarcadero Center, Fifth Floor  
3 San Francisco, California 94111-3824  
Telephone: (415) 398-8080  
4 Facsimile: (415) 398-5584

5 Attorney for Defendants CITY AND COUNTY OF  
SAN FRANCISCO and CITY OF SAN FRANCISCO  
6 UPTOWN PARKING CORPORATION

7 UNITED STATES DISTRICT COURT  
8  
9 NORTHERN DISTRICT OF CALIFORNIA  
10  
11 SAN FRANCISCO DIVISION

12 CRAIG YATES,

13 Plaintiff,

14 v.

15 UNION SQUARE; CITY AND COUNTY OF  
16 SAN FRANCISCO, CITY OF SAN  
FRANCISCO UPTOWN PARKING  
17 CORPORATION; EMPORIO RULLI IL  
CAFFE UNION SQ.; EMPORIO RULLI IL  
CAFFE UNION SQ., INC.; and DOES 1  
through 50, Inclusive,

18 Defendants.

CASE NO. C07-4087 JSW

**STIPULATION AND ORDER TO  
CONTINUE THE CASE MANAGEMENT  
CONFERENCE; [PROPOSED] ORDER  
THEREON**

Trial Date: None Set  
Complaint Filed: August 9, 2007

19 TO THE COURT AND ALL PARTIES:

20 The parties, Plaintiff, Craig Yates, and Defendants, City and County Of San  
21 Francisco and City Of San Francisco Uptown Parking Corporation ("Defendants"), collectively, the  
22 ("Parties"), by and through the undersigned counsel, hereby stipulate to a continuance of the Case  
23 Management Conference currently scheduled for January 4, 2008 for 90 days.

24 **RECITALS.**

25 A. On August 9, 2007, Plaintiff filed his complaint for this lawsuit (the  
26 "Complaint") against Defendants for Injunctive & Declaratory Relief and Damages.

27 B. On November 19, 2007, Plaintiff filed a Request for Dismissal of Defendants  
28

1 Emporio Rulli Il Caffè Union Sq. and Emporio Rulli Il Caffè Union Sq., Inc. which was granted on  
2 November 19, 2007.

3 C. On December 6, 2007, the Parties met and conferred at the subject property.

4 D. On December 12, 2007, Defendants re-filed their Motion for the Court to  
5 Decline Supplemental Jurisdiction Over and to Dismiss Plaintiff's State Law Claims [28 U.S.C.  
6 Section 1367 (c) and to Strike Plaintiff's Unsupported and Improper Damage Prayers from the  
7 Complaint [FRCP 12 (f)] ("Motion") which was originally filed on September 28, 2007, before  
8 Judge Elizabeth D. Laporte, now pending before this Court. A hearing on the Motion is set for  
9 February 8, 2008.

10 E. The Parties are still meeting and conferring and plan to mediate pursuant to  
11 General Order Rule 56.

12 The Parties request the Court continue the Case Management Conference for ninety

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(90) days in order to complete their mediation.

DATED: December , 2007

THIMESCH LAW OFFICES  
TIMOTHY S. THIMESCH  
GENE FARBER

By: \_\_\_\_\_  
TIMOTHY S. THIMESCH  
Attorneys for Plaintiff CRAIG YATES

DATED: December 21, 2007

JEFFER, MANGELS, BUTLER & MARMARO LLP  
MARTIN H. ORLICK  
MATTHEW S. KENEFICK

By: \_\_\_\_\_  
MARTIN H. ORLICK  
Attorneys for Defendants CITY AND COUNTY OF  
SAN FRANCISCO and CITY OF SAN FRANCISCO  
UPTOWN PARKING CORPORATION

DATED: December , 2007

OFFICE OF THE CITY ATTORNEY  
JOANNE HOEPER  
JAMES MOXON EMERY

By: \_\_\_\_\_  
JAMES MOXON EMERY  
Attorneys for Defendant CITY AND COUNTY OF  
SAN FRANCISCO

**ORDER.**

The parties having so stipulated, and good cause appearing therefor,

IT IS SO ORDERED that the Case Management Conference currently scheduled for  
January 4, 2008 be continued for ninety (90) days until April 4, 2008.

DATED: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT